



Tyler Haslam <tyler@haslamlawfirm.com>

RE: Hudson v. Racer, et al.

1 message

Stebbins, James C. <jstebbins@flahertylegal.com>

Thu, Sep 26, 2024 at 1:25 PM

To: Tyler Haslam <tyler@haslamlawfirm.com>

Cc: Kerry Nessel <nessel@comcast.net>, "Wendy E. Greve" <wgreve@pffwv.com>, "Burdette, Danica N." <dburdette@flahertylegal.com>, Luke Mathis <lmathis538@gmail.com>, Charlotte Dorsey <charlotte@haslamlawfirm.com>, Ben Vanston <bvanston@pffwv.com>, Brittany Scott <bscott@pffwv.com>, Jayne Hudnall <jhudnall@pffwv.com>

Tyler:

I understand your position.

Regarding your opening comment, written questions would only require me to talk to Mr. Racer him one time over the phone and no prep is needed. Preparing him for what I am sure will be another contentious deposition and having him review hundreds of pages of documents and then appear for the second deposition will require multiple in person meetings (including the deposition) and will be much harder on him than simply answering written questions. That is why I think it is by far the most reasonable option for you to present me with written questions and I will work to get them answered as quickly as I reasonably can. Respectfully, I think you are only considering what is easiest for you and not Mr. Racer or anyone else.

I would also note that it is not Mr. Racer's fault that you chose to depose him before you had all of the documents. Mr. Racer and I did not receive a copy of his personnel file until the same day you did so he was not holding anything back when you decided to depose him before you had everything and before a protective order had been entered.

If you change your mind about the written questions, let me know and we can work together to get you what you need as quickly as possible.

Best,

Jamie

James C. Stebbins

Member

Flaherty

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From: Tyler Haslam <tyler@haslamlawfirm.com>
Sent: Thursday, September 26, 2024 1:06 PM
To: Stebbins, James C. <jstebbins@flahertylegal.com>
Cc: Kerry Nessel <nessel@comcast.net>; Wendy E. Greve <wgreve@pffwv.com>; Burdette, Danica N. <dburdette@flahertylegal.com>; Luke Mathis <lmathis538@gmail.com>; Charlotte Dorsey <charlotte@haslamlawfirm.com>; Ben Vanston <bvanston@pffwv.com>; Brittany Scott <bscott@pffwv.com>; Jayne Hudnall <jhudnall@pffwv.com>
Subject: Re: Hudson v. Racer, et al.

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Jamie,

While I can appreciate that you and he keep missing each other, I believe this actually underscores our point that written questions will take longer than appearing for a deposition. He may be in the academy, but I feel confident in stating that a federal lawsuit where he is a defendant far outweighs him going through training a second time.

Thank you for clarifying that you still have not agreed to a second deposition and that you want to discuss a second deposition with him. Respectfully, the choice to sit for a second deposition is not his to make. It's yours. Admittedly I have not looked at the specific case law on the issue in the Fourth Circuit, but I have dealt with the issue in Ohio in the last six months, and Ohio is consistent about following the federal rules on these types of issues.

At this point I feel that I need to approach the Court under Rule 30(a)(2)(A)(ii) given the looming deadlines for deposition and summary judgment.

If you change your position in the next few hours before I get the motion filed, please let me know.

Tyler

On Thu, Sep 26, 2024 at 12:54 PM Stebbins, James C. <jstebbins@flahertylegal.com> wrote:

Tyler:

Mr. Racer and I missed each other when I was at lunch but he is going to try me back this afternoon I believe. I will let you know when I hear from him but this further underscores the difficulty of trying to conduct a second deposition while he is in training at the Academy.

Meanwhile, I do not want to mislead you and I want to be clear that we have not agreed to voluntarily have him appear for a second deposition. Despite trying different ways of communication, I have simply not had the chance to revisit that with him since my initial denial of your request. I just wanted to make sure that there is no misunderstanding and that you appreciate that I am simply agreeing to discuss it further with him. I hope to accomplish that later today.

No matter what we ultimately decide regarding a second deposition, I am still willing to have him answer some written questions even beyond any current deadline (assuming that the Court allows it) and I will get answers for you as promptly as I reasonably can rather than awaiting for the expiration of any timeframe provided by the rules. Answering written questions would take much less time than preparing for and appearing for a second deposition in the middle of this training so I hope that you will reconsider this option.

Best,

Jamie

James C. Stebbins

Member

Flaherty

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From: Tyler Haslam <tyler@haslamlawfirm.com>
Sent: Thursday, September 26, 2024 7:17 AM
To: Stebbins, James C. <jstebbins@flahertylegal.com>
Cc: Kerry Nessel <nessel@comcast.net>; Wendy E. Greve <wgreve@pffwv.com>; Burdette, Danica N. <dburdette@flahertylegal.com>; Luke Mathis <lmathis538@gmail.com>; Charlotte Dorsey <charlotte@haslamlawfirm.com>; Ben Vanston <bvanston@pffwv.com>; Brittany Scott <bscott@pffwv.com>; Jayne Hudnall <jhudnall@pffwv.com>
Subject: Re: Hudson v. Racer, et al.

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Jamie,

Did you speak with your client? We need to get this done.

Tyler

On Wed, Sep 25, 2024 at 10:31 AM Stebbins, James C. <jstebbins@flahertylegal.com> wrote:

I have not heard from my client yet and am in another mediation today. I will try to reach out again to him once we get situated.

Jamie

Sent from my iPhone

On Sep 25, 2024, at 10:03 AM, Tyler Haslam <tyler@haslamlawfirm.com> wrote:

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Jamie,

Do you have any updates?

Thanks.

Tyler

On Tue, Sep 24, 2024 at 11:07 AM Jayne Hudnall <jhudnall@pffwv.com> wrote:

Please copy Ben Vanston and Brittany Scott also, please.

From: Stebbins, James C. <jstebbins@flahertylegal.com>
Sent: Tuesday, September 24, 2024 10:43 AM
To: Tyler Haslam <tyler@haslamlawfirm.com>
Cc: Kerry Nessel <nessel@comcast.net>; Wendy E. Greve <wgreve@pffwv.com>; Jayne Hudnall <jhudnall@pffwv.com>; Burdette, Danica N. <dburdette@flahertylegal.com>; Luke Mathis <lmathis538@gmail.com>; Charlotte Dorsey <charlotte@haslamlawfirm.com>
Subject: [EXTERNAL] RE: Hudson v. Racer, et al.

Tyler:

I have reached out to my client to discuss the below but have not heard back from him yet. I am in mediation today but gave him my cell phone so I am hoping he will call me today. I will let you know when I hear from him.

Jamie

James C. Stebbins

Member

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From: Tyler Haslam <tyler@haslamlawfirm.com>
Sent: Friday, September 20, 2024 3:35 PM
To: Stebbins, James C. <jstebbins@flahertylegal.com>
Cc: Kerry Nessel <nessel@comcast.net>; Wendy E. Greve <wgreve@pffwv.com>; Jayne Hudnall <jhudnall@pffwv.com>; Burdette, Danica N. <dburdette@flahertylegal.com>; Luke Mathis <lmathis538@gmail.com>; Charlotte Dorsey <charlotte@haslamlawfirm.com>
Subject: Re: Hudson v. Racer, et al.

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Jamie,

We agreed to a protective order and to use the Court's standard form during our Rule 26(f) meeting. That's specifically noted in the Report of Parties Planning Meeting [Dkt. 17] that I filed on 11/27/23. Had the internal affairs investigative file been produced prior to Racer's deposition, we would have asked pointed questions about his orbital fracture and brain bleed. We had no reason to know that the County was allowing Racer to work and to drive while medically compromised.

I appreciate the offer to answer written questions, but it will be faster and more effective (particularly with the pending summary judgment deadline) to depose Racer a second time on the issues related to his eye injury. By the time we send you questions and you meet with him and record his answers, we can knock out a deposition. I don't anticipate that it will take more than an hour to an hour and half. We have no problem driving to Dunbar and taking it at the police academy. I don't care to do it at any hour of the night or day. If Racer can sit at 3 AM, I'll be there. I have the entirety of Tuesday, Wednesday, Thursday, and Friday next week available.

Please let me know.

On Mon, Sep 16, 2024 at 8:46 AM Stebbins, James C. <jstebbins@flahertylegal.com> wrote:

Tyler:

It is not my desire to bother the Court with this matter either. Respectfully, you could have asked Mr. Racer about his orbital fracture when you deposed him the first time and the right questions were not asked. I don't think that you ever proposed a protective order at any time.

Nevertheless, as a compromise, I will offer to permit a deposition of Mr. Racer by written questions under Rule 31 or I will have my client answer interrogatories targeted at the issue(s) you describe and I will do what I can to get answers promptly and not take 30 days. Doing one of these things will allow you to get the discovery you want with the least impact on his training.

Let me know if one of these options works for you.

Best,

Jamie

James C. Stebbins

Member

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From: Tyler Haslam <tyler@haslamlawfirm.com>

Sent: Friday, September 13, 2024 4:11 PM

To: Stebbins, James C. <jstebbins@flahertylegal.com>

Cc: Kerry Nessel <nessel@comcast.net>; Wendy E. Greve <wgreve@pffwv.com>; Jayne Hudnall <jhudnall@pffwv.com>; Burdette, Danica N. <dburdette@flahertylegal.com>

Subject: Re: Hudson v. Racer, et al.

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Jamie,

Racer can and should be deposed a second time, particularly as it relates to the newly discovered information about his orbital fracture and brain bleed.

Further, we indicated at the Rule 26(f) conference that we were fine with all standard protective orders promulgated by the Southern District.

We are trying to resolve this without court intervention, and we would like to avoid the unnecessary cost and delay associated with trying to compel his deposition through the court. Given the time constraints placed on depositions by order this week, we will ask the Court to intervene Monday morning if this issue cannot be resolved amicably between now and then.

Tyler

On Fri, Sep 13, 2024 at 4:00 PM Stebbins, James C. <jstebbins@flahertylegal.com> wrote:

Kerry:

I managed to talk to Mr. Racer today and he is not willing to be deposed voluntarily a second time. He is not trying to be difficult but we think that the request is not fair or reasonable for many reasons.

First of all, as you know, Mr. Racer was made available on July 2, 2024 starting at 9:00 in the morning and when Plaintiff decided to terminate his deposition at 2:15 p.m., that was not because of any request by Mr. Racer or his counsel to stop and we would have made him available for the remainder of the afternoon if necessary. We had no discussion at that time that there was any reason to leave the deposition open.

Secondly, I do not think that it is fair to ask Mr. Racer to subject himself to another deposition so that you can ask him questions about the KCSD investigation report. You have known about the existence of that report since it was first disclosed by the County Defendants in this case in their initial disclosures on July 2, 2024. The disclosures by the County Defendants indicated that the report would be made available to the other parties upon entry of a Protective Order and I do not believe that Plaintiff ever submitted any proposed Protective Order to obtain those documents prior to deciding to take Mr. Racer's deposition.

I would also note that Mr. Haslam already asked Mr. Racer's questions about that investigation during his deposition.

I am also aware of case law holding that if a party chooses to prematurely take a deposition before document discovery is complete, that is not an excuse for subjecting a witness to a second deposition.

Third, the Rules clearly contemplate only 1 deposition per witness unless stipulated by the parties.

Lastly, as you know, Mr. Racer is currently enrolled at the West Virginia State Police Academy where he hopes to graduate on December 13, 2024. I understand that this training is taxing both mentally and physically and I do not think that it is fair to ask him to prepare for and undergo a deposition (especially a second deposition) while he is in the middle of that training.

Based upon all of the above, I must respectfully decline your request. If you would like to discuss this further, please give me a call.

Have a nice weekend everyone.

Best,

Jamie

James C. Stebbins

Member

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From: Kerry Nessel <nessel@comcast.net>
Sent: Thursday, September 12, 2024 12:41 PM
To: Stebbins, James C. <jstebbins@flahertylegal.com>
Cc: Wendy E. Greve <wgreve@pffwv.com>; Jayne Hudnall <jhudnall@pffwv.com>;
tyler@haslamlawfirm.com; Burdette, Danica N. <dburdette@flahertylegal.com>
Subject: Re: Hudson v. Racer, et al.

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Thanks for thorough response.

Sent from my iPhone

On Sep 12, 2024, at 12:10 PM, Stebbins, James C.
<jstebbins@flahertylegal.com> wrote:

Hi Kerry:

I need to look at some things regarding this request and am under a deadline in another matter today and I also want to try to reach out to my client about it. I will give you a full response tomorrow even if I am unable to reach him. I did not want you to think I was ignoring this request since you asked for an answer ASAP.

Best,

Jamie

James C. Stebbins

Member

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From: KERRY NESSEL <nessel@comcast.net>
Sent: Wednesday, September 11, 2024 2:17 PM
To: Stebbins, James C. <jstebbins@flahertylegal.com>; Wendy E. Greve <wgreve@pffwv.com>; Jayne Hudnall <jhudnall@pffwv.com>
Cc: tyler@haslamlawfirm.com
Subject: Hudson v. Racer, et al.

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Counsel, particularly Jamie, Tyler and I feel the need to redepose Racer due to the 700 + page internal affairs investigation, specifically Lt. Pile's interview with Racer and her conclusions.

As the Court entered and order yesterday extending the deposition deadline to Sept 27 and the recent disclosure, we believe our request is reasonable.

Please let me know ASAP.

Additionally, considering Racer had been brutally battered by no less than 5 men at a bar and suffered significant physical injuries, including a brain bleed and broken orbital bone on his left side, we request his medical records concerning the same.

Further, we are willing to travel to the WVSP academy to conduct this deposition.

Finally, please provide us dates for your availability to depose Lt. Pile. I assume this will have to take place in Chas.

Thanks.

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